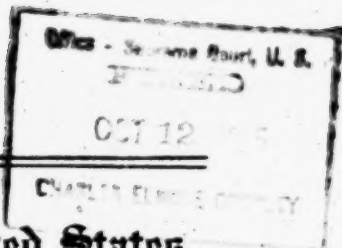


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Supreme Court of the United States

October Term, 1945.

No. **505**

GEORGE C. HOLMBERG, FRANK C. BALL,
CARL J. EASTERBERG, GEORGE F. HARDIE
and PAT B. MORRIS, on behalf of themselves and
all other creditors of the Southern Minnesota Joint
Stock Land Bank of Minneapolis,
Petitioners and Appellees below,

vs.

CHARLES ARMBRECHT and GILBERT MIL-
LER, BARBARA RICHARDS MICHEL, MURIEL
RICHARDS PERSHING and DOROTHY RICH-
ARDS HIRSHON, as Executors under the Last
Will and Testament of JULES S. BACHE, de-
ceased,
Respondents and Appellants below.

**Petition for Writ of Certiorari to the United States Cir-
cuit Court of Appeals for the Second Circuit
and Brief in Support Thereof.**

✓ EDMUND BURKE, JR.,
Counsel for Petitioners.

FRANKLIN S. WOOD,
CLARENCE FRIED,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1945.

No.

GEORGE C. HOLMBERG, FRANK C. BALL, CARL J. EASTERBERG, GEORGE F. HARDIE and PAT B. MORRIS, on behalf of themselves and all other creditors of the Southern Minnesota Joint Stock Land Bank of Minneapolis,
Petitioners and Appellees below.

vs.

CHARLES ARMBRECHT and GILBERT MILLER, BARBARA RICHARDS MICHEL, MURIEL RICHARDS PERSHING and DOROTHY RICHARDS HIRSHON, as Executors under the Last Will and Testament of JULES S. BACHE, deceased,
Respondents and Appellants below.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit and Brief in Support Thereof.

To the Honorable Harlan F. Stone, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

I.

Summary Statement of the Matter Involved.

This is a suit in equity brought in the United States District Court for the Southern District of New York by petitioners herein against the respondents to assess and

collect the statutory liability created by a federal statute (12 U. S. C. A. 812) in favor of creditors of a joint stock land bank and imposed upon stockholders thereof equally and ratably but not to exceed 100% of their stockholdings. The respondent Charles Armbrecht was the record owner of 100 shares of stock of the Southern Minnesota Joint Stock Land Bank of Minneapolis (R. 20). The remaining respondents are the executors of the Estate of Jules S. Bache, deceased, who was the real owner of the stock registered in Charles Armbrecht's name (R. 19). Said Charles Armbrecht was a former employee of J. S. Bache & Co. of which firm the deceased defendant Jules S. Bache was a partner (R. 22). Charles Armbrecht never had \$10,000 and could never respond to a judgment in the sum of \$10,000 (R. 32). The trial was by court without a jury and a judgment was rendered by the trial court in favor of petitioners and against the defendants for the sum of \$10,000. The trial court found as a fact that plaintiffs were not guilty of laches that Charles Armbrecht was used as a dummy by Bache and that defendants were guilty of inequitable conduct and therefore laches could not be invoked by defendants who were in hiding until they were discovered by plaintiff (R. 104). Appeal from said judgment was taken by the respondents to the United States Circuit Court of Appeals for the Second Circuit which reversed the decree of the District Court on the authority of *Guaranty Trust Company of New York v. Grace W. York*, decided by this court on June 18, 1945 (R. 117). The principal questions involved on said appeal were the rule of laches as applied in the federal courts, the applicability of the New York State statute of limitations and the effect of this court's decision in the case of *Guaranty Trust Company of New York v. Grace W. York*. The Circuit Court of Appeals reversed the decree of the trial court solely as a matter of law on the ground that the New York State statute of limitations was absolutely binding upon the federal court (R. 113-121).

II.

Reasons Relied on for the Allowance of the Writ.

1. The decision of the said Circuit Court of Appeals as to the binding effect of the New York State statute of limitations despite the fact that right to levy and collect the assessment is created by federal statute is an erroneous decision of an important question of general law and will vitally affect rights created by federal statutes.

2. The holding of the said Circuit Court of Appeals as to the binding effect of the New York State statute of limitations with respect to a right created by federal statute is a decision of a federal question in a way probably in conflict with applicable decisions of this court.

III.

Your petitioners present to this court, and file herewith as an exhibit hereto, a duly certified transcript of the entire record in the case, as the same appears in the United States Circuit Court of Appeals.

WHEREFORE, your petitioners pray that a writ of certiorari issue under the seal of this court, directed to the Circuit Court of Appeals for the Second Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of the said Circuit Court in the case numbered and entitled on its docket No. 19734, *George C. Holmberg et al., Appellants v. Charles Ambrecht, et al., Appellees*, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court be reversed by the court, and for such further relief as to this court may seem proper.

Dated: New York, New York, October 11, 1945.

EDMUND BURKE, JR.,
Counsel for Petitioners.

FRANKLIN S. WOOD,
CLARENCE FRIED,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1945.

No.

GEORGE C. HOLMBERG, FRANK C. BALL, CARL J. EASTERBERG, GEORGE F. HARDIE and PAT B. MORRIS, on behalf of themselves and all other creditors of the Southern Minnesota Joint Stock Land Bank of Minneapolis,
Petitioners and Appellees below.

vs.

CHARLES ARMBRECHT and GILBERT MILLEN, BARBARA RICHARDS MICHEL, MURIEL RICHARDS PERSHING and DOROTHY RICHARDS HIRSHON, as Executors under the Last Will and Testament of JULES S. BACHE, deceased,
Respondents and Appellants below.

Brief in Support of Petition for Writ of Certiorari.

I.

Opinions of Court Below.

The opinion of the District Court was rendered on November 1, 1944 (R. 99). The opinion of the Circuit Court of Appeals was rendered on July 13, 1945 (R. 112). Official citation is not yet available.

II.**Grounds of Jurisdiction of the Supreme Court.**

1. The date of the judgment to be reviewed is July 13, 1945 (R. 122).

2. The statutory provision which is believed to sustain the jurisdiction of the court is 28 U. S. C. A. 347.

3. The cause of action asserted by petitioners as creditors of the Southern Minnesota Joint Stock Land Bank of Minneapolis, is created by a federal statute (12 U. S. C. A. 812) and the ruling by the Circuit Court that this cause of action is governed by a state statute of limitations is a decision of a federal question which vitally affects all rights created by federal statutes and is probably in conflict with the decisions of this court and the questions involved are substantial.

4. The case believed to sustain said jurisdiction is as follows: *Wyman v. Wallace*, 201 U. S. 230.

III.**Statement of the Case.**

This has already been stated in the preceding petition under I (pp. 1-2) which is hereby adopted and made part of this brief.

IV.**Specification of Errors.**

1. The Circuit Court of Appeals erred in holding that this action was governed by the New York State statute of limitations.

2. The Circuit Court of Appeals erred in unwarrantedly extending the rule enunciated by this court in *Guaranty Trust Company of New York v. Grace W. York*, decided June 18, 1945.

V.

Questions Presented.

1. Is a federal court sitting in equity in a case based upon a federal statute bound by a state statute of limitations or governed by the rule of laches?

2. Where the District Court has found that defendants are guilty of inequitable conduct by hiding behind a fictitious record owner of stock in a joint stock land bank, can laches be invoked by such defendants until they are found?

VI.

Summary of Argument.

1. This action is not governed by any state statute of limitations because it is based upon a right created by a federal statute and is solely cognizable in equity.

2. The construction by the Circuit Court of the decision of this court in the case of *Guaranty Trust Company of New York v. Grace York*, decided June 18, 1945 is an unwarranted extension of the rule expressed therein.

VII.

Argument.

POINT I.

The action is one solely enforceable in equity and there is no concurrent remedy of law. *Wheeler v. Green*,

280 U. S. 49; *Brusselback v. Cago*, 85 Fed. (2d) 20; *Holmberg v. Carr*, 86 Fed. (2d) 727; *Christopher v. Brusselback*, 302 U. S. 500; *Russell v. Todd*, 309 U. S. 280, 286.

The decisions in *Erie v. Tompkins*, 304 U. S. 64 and *Ruhlin v. New York Life Ins. Co.*, 304 U. S. 202, did not affect rights created by a federal statute. The case of *Guaranty Trust Company of New York v. York* decided by this court on June 18, 1945 in essence held that where the jurisdiction of the court is predicated upon diversity of citizenship that all state laws statutory or judicial are binding upon federal courts in the same manner as if the action were brought in the state court. But that decision by its clear language is inapplicable to the instant case. At the outset of the opinion Mr. Justice Frankfurter specifically stated:

“We put to one side the considerations relevant in disposing of questions that arise when a federal court is adjudicating a claim based on a federal law” (p. 3, printed copy of Opinion).

In the present suit the right given to creditors of a joint stock land bank is created by a federal statute. The trial court found that the plaintiffs were not guilty of laches and that the defendants could not invoke laches when the delay was occasioned by their own inequitable conduct (R. 104).

It is undoubtedly true that in the ordinary case with nothing else appearing federal courts sitting in equity will apply statutes of limitation by analogy but where, as in this case, the trial court found as a fact that the defendants were found guilty of inequitable conduct, the rule of laches which obtains in the federal court is the one applied by the District Court, namely that laches will not be invoked against the plaintiffs until the defendants are discovered. In *Holmberg v. Anchell*, 24 Fed. Supp. 594,

603, the rule was stated by the late United States District Judge, John M. Woolsey as follows:

“Laches may not be invoked by parties in hiding until they are found.”

In *Momand v. Universal Film Exchange*, 43 Fed. Supp. 996, 1010, and *Garvy v. Wilder*, 121 Fed. (2d) 714, 715, the courts held that the date of maturity of a cause of action is a federal question.

Argument.

POINT II.

The Circuit Court erroneously extended the rule enunciated by this court in the case of *Guaranty Trust Company v. York* to apply to rights created by federal statute particularly in view of the clearly expressed intent by this court not to consider the effect of state statutes upon rights created by a federal statute. The Circuit Court's reliance upon the decision in this court in *Russell v. Todd* is equally erroneous because in the *Russell* case there was no finding by the lower courts that the defendants were guilty of inequitable conduct. It thus presented the ordinary case in equity which we mentioned above.

Our starting point should be the law of equitable jurisprudence applicable to federal courts which in the present case remains inviolate because the basis of the action is a right created by federal statute. In the *Guaranty Trust Company* opinion, Mr. Justice Frankfurter commented upon this distinction as follows:

“Dicta may be cited characterizing equity as an independent body of law. To the extent that we have indicated, it is. But insofar as these general observations go beyond that, they merely reflect no-

tions that have been replaced by a sharper analysis of what federal courts do when they enforce rights that have no federal origin." (p. 13, printed copy of Opinion).

In actions solely cognizable in equity, the general rule is that mere lapse of time will not constitute laches. *Southern Pacific v. Bogert*, 250 U. S. 483, 488-490; *St. Louis v. Spiller*, 14 F. (2d) 288, affirmed 274 U. S. 304. It is true that a number of cases have held that state statute of limitations, in comparable actions, will ordinarily be used as a guide in determining whether a plaintiff has been guilty of laches in instituting his action, e. g. *Benedict v. City of New York*, 250 U. S. 321; *Kirby v. Lake Shore & Michigan Southern R. R.*, 120 U. S. 130. But, basically, statutes of limitations so applied are merely guides in measuring laches. For, in the final analysis, the applicability of the doctrine of laches depends upon the circumstances of each particular case (*Abraham v. Ordway*, 138 U. S. 416). The finding by the District Court that defendants were guilty of inequitable conduct is in effect a finding that defendants are estopped from asserting laches and relegates this case to the application of the general rule of laches without the limitations imposed by later qualifying authorities whether by analogy or otherwise.

Other cases relied upon by the Circuit Court are easily distinguishable. In *Ball v. Gibbs*, 118 Fed. (2d) 958, the defendant transferred shares of stock to his daughter and retransferred them to himself and again to his daughter. The identity of family names and the transfers and retransfers were matters of record. In the instant case, the defendant Bache was a member of a stock brokerage firm and the transfer to Armbrecht, who might well have been a regular customer of the firm, was no indication that the transfer was intended as a cloak to shield the

real transaction. The District Court found as a fact that information arousing suspicion was disclosed to plaintiffs in December, 1941 or January, 1942 (R. 110).

The cases of *Friede v. Jennings* and *Friede v. Sprout* (R. 120) relied upon by the Circuit Court as authority for the proposition that the assessment authorized by the federal statute is enforceable in state courts are wholly inapplicable. Whether such an action could or could not be brought in a state court is seriously open to question. It so happens that the above two cases were brought by Ervin I. Friede, the receiver of the same bank involved in the present suit, and both were actions at law predicated upon the theory that the decree of assessment obtained in the domiciliary jurisdiction was *res adjudicata* as to the insolvency of the bank and the necessity of the 100% levy. Those actions were brought before the reversals in *Christopher v. Brusselback*, 302 U. S. 500 and *Holmberg v. Carr*, 86 Fed. (2d) 727, which completely nullified the theory that the action could be brought in the law court (R. 36).

The Circuit Court also relied upon an Ohio decision (R. 121) and then stated:

"To permit a different treatment in the federal courts would therefore constitute an undesirable inroad on the practical policy of uniformity embodied in *Erie R. Co. v. Tompkins*, *supra*, to the same extent as the permission of such variation would have been in the *York* case" (R. 121).

The uniformity sought relates to cases where federal jurisdiction is based only on diversity of citizenship. Quite the contrary is true where the action is based upon a right created by federal statute because chaos and confusion would result if that right was subjected to state statutes and local judicial law. Uniformity in such cases can only

be accomplished by maintaining a separate federal jurisprudence affecting the United States Constitution and federal statutes.

We submit that none of the above discussed cases would warrant the Circuit Court in extending the rule of the *Guaranty Trust Co. v. York* case to apply to rights created by federal statutes particularly with reference to the facts found in this case by the District Court.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers by granting a writ of certiorari and thereafter reviewing and reversing the decision of the Circuit Court of Appeals.

Respectfully submitted,

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